IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5814 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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BABULAL SHAMJI CHAUHAN

Versus

STATE OF GUJARAT

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Appearance:

MR GT PARIKH for Petitioner

MS NANDINI JOSHI AGP for Respondents

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CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 23/02/2001

ORAL JUDGEMENT

1. By means of filing this petition under Article 226 of the Constitution, the petitioner who has been suspended on the basis of launching prosecution against him for commission of the alleged offences punishable under sections 20 (b) and 29 of the Narcotic Drugs & Psychotropic Substances Act, 1985, tried in Sessions Case

No.129 of 1989 in the Court of the Additional Sessions Judge, Vadodara and at the conclusion of trial has been acquitted, has voiced his grievance against respondent No.2 in not revoking suspension order and in not giving him full backwages and praying to issue a writ of mandamus or certiorari or any other appropriate writ, direction or order or orders quashing the order of suspension passed against him and directing them to reinstate him in service and to treat the petitioner's period of suspension as on duty and pay all the benefits of pay and allowances to him from the date of suspension as if he was continued in service all throughout.

2. Ms. Joshi, learned AGP, states that before issuance of Rule on November 12, 1990 the petitioner was already reinstated by the department vide order dated September 4, 1990 and as per the said order so far as the issue of treating the period of suspension is concerned, the order in that regard as envisaged under Rule 152 of the Bombay Civil Services Rules, 1959 (hereinafter referred to as the 'BCSR'), shall be passed separately and that order has not been passed so far. She, therefore, states that the prayer made by the petitioner for his reinstatement does not survive and so far as the treating of the period of suspension is concerned, the department as still to pass order and, therefore, this petition is premature.

3. Mr. G.T. Parikh, learned advocate for the petitioner states that it is true that by virtue of the order dated September 4, 1990 the petitioner has already been reinstated. However, the department has not passed subsequent order as envisaged under Rule 152 of the BCSR treating the period of suspension either as on duty or absent from duty. Therefore, appropriate direction may be issued to expedite the inquiry in that regard. The learned advocate for the petitioner, therefore, seeks leave to withdraw the petition reserving liberty to file fresh petition if any adverse order is passed against him.

4. In view of this, leave to withdraw the petition is granted reserving liberty to file fresh petition if any order adverse to the petitioner is passed under Rule 152 of the BCSR. Respondent No.2 is directed to complete the inquiry within a period of eight weeks from the date receipt of the writ of this Court and a copy of the order that may be passed by respondent No.2 shall be forwarded to the petitioner immediately within a period of four weeks thereafter.

5. In the net result, the petition stands disposed of as it is withdrawn. Rule is discharged with no order as to costs. Interim relief, if any, granted earlier stands vacated.

23.2.2001. (A.M. Kapadia, J.)

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